

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THE NEW YORK TIMES COMPANY	:	
and JOSEPH BERNSTEIN,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	<u>COMPLAINT</u>
UNITED STATES DEPARTMENT OF JUSTICE,	:	
	:	
Defendant.	:	
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Plaintiffs THE NEW YORK TIMES COMPANY and JOSEPH BERNSTEIN (together, “The Times”), by and through their undersigned attorneys, allege as follows:

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552 *et seq.* (“FOIA”), to obtain an order for the production of agency records from the UNITED STATES DEPARTMENT OF JUSTICE (“DOJ”) in response to a request properly made by Plaintiffs (the “Request”).

PARTIES

2. Plaintiff The New York Times Company publishes *The New York Times* newspaper and www.nytimes.com. The Times is headquartered in this judicial district at 620 Eighth Avenue, New York, NY, 10018.

3. Plaintiff Joseph Bernstein is a reporter at *The New York Times*.

4. Defendant, DOJ, is an agency within the federal government. It has possession and control of the records that Plaintiffs seek.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

6. Venue is premised on Plaintiff The New York Times Company's place of business and is proper in this district under 5 U.S.C. § 552(a)(4)(B).

LEGAL FRAMEWORK

7. FOIA requires that agencies make a determination on FOIA requests within 20 business days. *See* 5 U.S.C. § 552(a)(6)(A)(i).

8. "Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request." *Id.* § 552(a)(6)(C)(i).

9. Defendant has failed to meet this statutory deadline set for responding to the Request. The Times is therefore deemed to have exhausted all administrative remedies under 5 U.S.C. § 552(a)(6).

FACTS

10. On December 27, 2024, Mr. Bernstein, on behalf of The Times, submitted his Request to the Criminal Division of DOJ.

11. The Request seeks a deposition transcript of a man named Stefan Leili in a case brought by DOJ in the U.S. District Court for the District of New Jersey: *United States v. Leili*, No. 86-cv-1370. More specifically, the Request seeks the transcript of the second of two depositions in the case, which was conducted from June 24 to 26, 1986. The transcript of the second deposition appears from docketing records to be broken into two or more documents.

12. The Times seeks the deposition transcript as part of journalistic research it is doing on DOJ's Office of Special Investigations, which was responsible for bringing the case on behalf of the U.S. government. Mr. Bernstein's father was the DOJ attorney responsible for the Leili case.

13. On January 17, 2025, the Criminal Division of DOJ acknowledged receipt of the Request. It was assigned a tracking number, CRM-302240086.

14. On February 7, 2025, DOJ sent an update to Mr. Bernstein. It said that "potentially responsive documents have been received and are under review." It further informed him that a request such as his takes on average 731 days to process.

15. The Times has not received further communication about the Request from DOJ.

CAUSE OF ACTION (5 U.S.C. § 552)

16. Plaintiffs repeat, reallege, and reincorporate the allegations in the foregoing paragraphs as though fully set forth herein.

17. Defendant is an agency subject to FOIA and must therefore conduct an adequate search using reasonable efforts for responsive records; release any disclosable records in its possession at the time of the request; and provide a lawful reason for withholding any other materials as to which it is claiming an exemption.

18. Defendant has failed to meet FOIA's statutory deadline of 20 business days to make a determination. 5 U.S.C. § 552(a)(6)(A)(i).

19. Even if Defendant has made a determination, it has failed to "ma[ke] promptly available" the records at issue. *Id.* § 552(a)(6)(C)(i).

20. Accordingly, Plaintiffs are deemed to have exhausted their administrative remedies under FOIA. *See id.* § 552(a)(6).

21. Defendant is permitted to withhold documents or parts of documents only if one of FOIA's enumerated exemptions applies.

22. No exemptions permit the withholding of the material sought by this Request.

23. Accordingly, Plaintiffs are entitled to an order compelling Defendant to produce the records responsive to this Request.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

24. Declare that the records sought by the Request, as described in the foregoing paragraphs, are public under 5 U.S.C. § 552 and must be disclosed;

25. Order Defendant to provide those records to Plaintiffs within 20 business days of the Court's order;

26. Award Plaintiffs the costs of this proceeding, including reasonable attorneys' fees, as expressly permitted by FOIA, 5 U.S.C. § 552(a)(4)(E)(i); and

27. Grant Plaintiffs such other relief as this Court deems just and proper.

Dated: New York, New York
February 11, 2025

/s/ David E. McCraw
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